



May 16, 2000

Ms. Margaret Lalk
Assistant District Attorney
Brazos County
300 E. 26th Street, Suite 310
Bryan, Texas 77803

OR2000-1940

Dear Ms. Lalk:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135224.

The Brazos County District Attorney's Office (the "DA") received a request for records relating to a particular case file. You claim that the requested information is excepted from disclosure under sections 552.108(a)(2), (b)(2), and (b)(3) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You assert that the Brazos County Grand Jury no-billed the suspect and thus the information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable. Following our review of the file, we conclude that you may withhold the requested information because it is related to the investigation and prosecution of this case. You further state that the department has already released basic information as required by section 552.108(c). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

You also indicate that the medical records responsive to this request are the same records that were the subject of a previous determination by this office in Open Records Letter No. 2000-0212 (2000). The Medical Practice Act (the "MPA") provides that "a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter." Occupations Code § 159.002(b); *see* Open Records Decision No. 546 (1990). As we stated in our previous letter, the submitted medical records may only be released in accordance with chapter 159 of the Occupations Code. *See* Occ. Code §§ 159.002(c), 159.004, 159.005; *see also* Open Records Decision No. 598 (1991) (MPA governs over more general provisions of the Public Information Act). You must withhold the medical records as provided by Open Records Letter No. 2000-0212.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/CHS/ljp

Ref: ID# 135224

Encl. Submitted documents

cc: Ms. Benita Noel
Dateline NBC
30 Rockefeller Plaza
New York, New York 10112
(w/o enclosures)